

Defendants.

NO. 6:16-CV-39-JRH-GRS

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concerning inferences that it may draw from Defendants' destruction of evidence. In particular, Plaintiff proposes the following sanctions:

1. Plaintiff should be permitted to offer evidence of the following hearsay statements regardless of whether they would otherwise be admissible:
 - a. Any statements made by Randall Davison concerning his medical condition and attempts to obtain medical attention;
 - b. The statements of an unknown correctional officer who told Randall Davison that she had been ordered not to allow Davison to return to the medical unit (Oates Dep. 21);
 - c. The statements of an unknown medical staff member who instructed Randall Davison not to return to the medical unit because he was going down there too often (Oates Dep. 22-23, 35-37);
 - d. The portions of prisoner Gordon Herrick's affidavit describing the interaction that he witnessed between Randall Davison and Stephen Nicolou on January 21 or 22, 2015 (Herrick Aff. ¶¶ 16-18);
2. Defendants should be barred from making the following arguments:
 - a. That Randall Davison is at fault for his death because he failed to diligently seek medical treatment;
 - b. That Randall Davison attempted to conceal his tattoo or symptoms of infection from correctional officers or medical staff;
 - c. That the symptoms described in Shadaya Latimore's dormitory log entry at 5:10 p.m. on January 23, 2015, might not have existed when Randall Davison encountered Defendants earlier that day;
3. The Court should instruct jurors as follows:
 - a. Randall Davison submitted sick call slips between January 20 and January 26, 2015. The sick call slips would have shown the progress of Davison's bacterial infection and the symptoms he exhibited on or before the morning of January 23, 2015. A segregation checklist also existed that would have listed any medical problems or unusual symptoms that Randall Davison exhibited on the morning of January 23, 2015.

- b. The sick call forms and segregation checklist should have been retained. The documents were kept at Georgia State Prison. The segregation checklist was accessible to Defendant Thrift on January 23, 2015. The sick call forms were accessible to Defendants Nicolou and Ball until they were destroyed.
- c. Plaintiff requested the sick call forms and segregation checklist while the documents were in existence. The documents were lost or destroyed for unknown reasons.
- d. If the jury finds that Randall Davison was displaying the symptoms described by Shadaya Latimore, Tavis Oates, Jerry Reed, Willard White, and/or Paul Kozachyn, the jury may conclude that those symptoms were noted on the missing sick call forms and the segregation checklist.

CONCLUSION

The Court should sanction Defendants for spoliation of evidence.²

² Counsel for the parties conferred in good faith in an effort to resolve this dispute.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2017, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of filing to all attorneys of record.

/s/ Daniel B. Millman
Counsel for Plaintiff